

**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-01-PA-312
	)	
Beacon Broadcasting, Inc.	)	NAL/Acct. No. 200232400002
	)	
Warren, Ohio	)	FRN: 0006-1146-64

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: June 14, 2002**

By the District Director, Philadelphia Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Beacon Broadcasting, Inc. (“Beacon”), the licensee of WGRP(AM), Greenville, Pennsylvania, has apparently violated Sections 17.4(g), 17.48(a) and 17.50 of the Commission’s Rules (“the Rules”).<sup>1</sup> These violations occurred as a result of Beacon’s failure to post the Antenna Structure Registration (“ASR”) numbers on the WGRP(AM) antenna structures; failure to notify the Federal Aviation Administration (“FAA”) that the obstruction lighting was improperly functioning; and failure to repaint the WGRP(AM) antenna structures. We conclude that Beacon is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

**II. BACKGROUND**

2. On April 4, 2001, FCC agent David Dombrowski of the Enforcement Bureau’s Philadelphia Office inspected the two antenna structures utilized for broadcast station WGRP(AM). The antenna structures are assigned the ASR numbers 1213201 and 1213203 and located at 44 McCracken Road, Greenville, Pennsylvania. During the inspection, the FCC agent observed that the ASR numbers were not posted on the WGRP(AM) antenna structures and that the paint on both antenna structures was severely faded and flaking.

3. On April 23, 2001, the Philadelphia Office issued Beacon a Notice of Violation (“NOV”) for failure to post the ASR numbers 1213201 and 1213203 on the WGRP(AM) antenna structures, in violation of Section 17.4(g) of the Rules, and for failure to clean and repaint the WGRP(AM) antenna structures to maintain good visibility, in violation of Section 17.50 of the Rules. In a response dated May 23, 2001, Beacon acknowledged the violations and stated that it posted the ASR numbers at the base of the antenna structures and would repaint the antenna structures within 60 days.

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<sup>1</sup> 47 C.F.R. §§ 17.4(g), 17.48(a) and 17.50.

## Federal Communications Commission

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4. On November 7, 2001 and November 8, 2001, FCC Agent Dombrowski re-inspected the WGRP(AM) antenna structures to verify that Beacon had sufficiently addressed the violations cited in the April 23, 2001 NOV. On November 8, 2001, FCC agent Dombrowski observed that the ASR numbers 1213201 and 1213203 were not posted on the WGRP(AM) antenna structures and that the paint on both antenna structures was still severely faded and flaking. The FCC agent also observed on November 7, 2001 at 6:00 p.m. and on November 8, 2001 at 6:00 a.m. that the top-level red obstruction lighting on the antenna structure 1213201 was extinguished. After interviewing Michael Arch, the Station Manager, the FCC agent determined that Beacon failed to notify the FAA that the top-level obstruction lighting was extinguished.

5. On November 15, 2001, the Philadelphia Office issued Beacon a NOV for failure to post the ASR numbers 1213201 and 1213203 on the WGRP(AM) antenna structures, in violation of Section 17.4(g) of the Rules; for failure to notify the FAA that the top-level red obstruction lighting was extinguished, in violation of Section 17.48(a) of the Rules; and for failure to repaint the antenna structures to maintain good visibility, in violation of Section 17.50 of the Rules. In a response dated December 5, 2001, Beacon acknowledged the violations and stated that it posted the ASR numbers on the antenna structures, notified the FAA of the obstruction light malfunction and commenced work to correct the obstruction lighting outage. Beacon also stated that it obtained estimates to repaint the antenna structures but the work would commence upon the receipt of funds.

### III. DISCUSSION

6. Section 17.4(g) of the Rules requires that the ASR number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Section 17.50 of the Rules requires that the antenna structure be cleaned or repainted as often as necessary to maintain good visibility. In the April 23, 2001 Notice of Violation, the Philadelphia Office notified Beacon that it should immediately post the ASR numbers and re-paint the antenna structures. However, on November 8, 2001, the FCC agent observed that Beacon still had not taken corrective action to post the ASR or paint the tower.

7. Section 17.48(a) of the Rules requires that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improperly functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure. On November 7, 2001 and November 8, 2001, the top-level red obstruction lighting on antenna structure 1213201 was extinguished. Beacon failed to notify the FAA that the top-level obstruction lighting was extinguished.

8. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the Communications Act of 1934, as amended<sup>2</sup>, (the "Act") as implemented in Section 1.80 of the Rules<sup>3</sup>. A forfeiture may be assessed against a person who the Commission finds to have willfully<sup>4</sup> or repeatedly<sup>5</sup> failed

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<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> 47 C.F.R. § 1.80.

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and

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**Federal Communications Commission**

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to comply with the provisions of the Act or the Rules.

9. Based on the evidence before us, we find that Beacon apparently willfully and repeatedly violated Section 17.4(g), Section 17.48(a) and Section 17.50 of the Rules. Forfeiture amounts are decided in accordance with Section 503(b)(2) of the Act<sup>6</sup> and the Commission's forfeiture guidelines in Section 1.80(b)(4) of the Rules<sup>7</sup>. The Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) ("Forfeiture Policy Statement"), sets the base forfeiture amount for Beacon's marking and lighting violations at \$10,000 and for failure to notify the FAA at \$3,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for failure to display the antenna structure registration number. The Commission has determined, however, that the appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.<sup>8</sup> In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>9</sup> which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and the statutory factors to the instant case and applying the inflation adjustments, we believe that a fifteen thousand dollar (\$15,000) monetary forfeiture is warranted.

**IV. ORDERING CLAUSES**

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>10</sup> Beacon Broadcasting, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for failing to post the ASR numbers, failing to notify the FAA and failing to maintain the paint on the WGRP(AM) antenna structures.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Beacon Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or

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deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...."  
*See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>6</sup> 47 C.F.R. § 503(b)(2).

<sup>7</sup> C.F.R. § 1.80(b)(4).

<sup>8</sup> *See American Tower Corporation*, 16 FCC Rcd 1282 (2001).

<sup>9</sup> 47 U.S.C § 503(b)(2)(D).

<sup>10</sup> 47 C.F.R. §§ 0.111 and 0.311.

**Federal Communications Commission**

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cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232400002 and FRN: 0006-1146-64.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232400002 and FRN: 0006-1146-64.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>11</sup>

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Beacon Broadcasting, Inc., 5075 Mahoning Avenue, Warren, Ohio 44483 and Beacon Broadcasting, Radio Station WGRP, 44 McCracken Road, Greenville, Pennsylvania 16125.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes  
District Director  
Philadelphia Office

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<sup>11</sup> See 47 C.F.R. § 1.1914.